



U. S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

February 2, 2000

MEMORANDUM FOR CONTRACTING OFFICERS AND NEGOTIATORS

FROM: M/OP, Rodney W. Johnson, Director

TO: Distribution List FAC

CONTRACT INFORMATION BULLETIN 00 - 04

SUBJECT: Implementation of FY 2000 Population Certification Requirements

Section 599D of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2000 (as enacted in Public Law 106-113), prohibits USAID from providing FY 2000 population funds appropriated under the statute (hereafter "FY 2000 Population Funds") to non-U.S., nongovernmental organizations, whether non-profit or profit-making, and multilateral organizations (hereafter called "covered" organizations), unless they certify that they will not engage in specified abortion-related activities during the period the funds are initially available for obligation, that is, through September 30, 2001. The requirement applies to covered¹ organizations receiving FY 2000 Population Funds either directly from USAID or as subcontractors or subgrantees, and to activities conducted by such organizations with either USAID or non-USAID funding. Although the President has exercised statutory authority to waive this requirement, only a limited amount of population funding may be provided under the law—a total of \$15 million for population activities worldwide—to covered organizations that do not certify. Thus, when certifications cannot be obtained, USAID may provide funding to non-certifying, covered organizations only within the limited \$15 million cap. The certification requirement does not apply to U.S. awardees, other U.S. entities, foreign governments and certain others.

To implement the law, USAID is requesting all covered prime awardees to complete an FY 2000 Population Assistance Certification Form, prior to receiving FY 2000 Population Funds, which indicates whether the prime certifies or declines to certify. In addition, USAID will require all prime awardees receiving FY 2000 Population Funds, whether they are covered or not, to request certification forms from their covered subawardees at all levels below the prime award. USAID/G/PHN must specifically approve the funding levels of FY 2000 Population Funds for all non-certifying organizations. PHN staff in Washington and

¹ Commercial firms that are not engaged in family planning activities (e.g., firms supplying computer equipment, office supplies, maintenance services or printing services) are not considered "covered" organizations.

the field will be responsible for collecting certification forms from prime awardees, responding to questions from prime awardees to facilitate their collection of certification forms from their covered subawardees, and obtaining approvals of funding levels for non-certifying organizations from USAID/G/PHN.

Prior to making any award to a covered organization funded with FY 2000 Population Funds, COs and Grant/Agreement Officers must obtain written confirmation from the requesting office that a certification is on file or that, in the case of an organization that declines to certify, or does not complete the certification form, USAID/G/PHN has approved funding for the awardee under the \$15 million cap. In addition, Contract/Agreement Officers must include the appropriate clause/provision (attached) in all prime awards committing FY 2000 Population Funds. The clause for use in contracts is Attachment 1. The provision for grants and cooperative agreements is Attachment 2. The Certification Form and Certification Guidance (Attachments 3 and 4) must also be attached to the award document.

Attachment 1

Contract Clause to be included in Part H when FY 2000 population funding may be provided in the contract.

POPULATION ASSISTANCE - FY 2000 Certification (JAN 2000)

(a) Requirement for Certain Organizations to Complete Certification Form. Pursuant to Section 599D of the Foreign Operations, Export Financing, and Related Programs Act, 2000 (P.L.106-113), non-U.S., non-governmental organizations, both non-profit and profit-making, and multilateral organizations (“covered” organizations) must complete a FY 2000 Population Assistance Certification Form, prior to receiving any FY 2000 population funds either directly or through subawards. The related Certification Guidance (January 2000), incorporated herein by reference, explains which organizations are covered. A copy of the guidance is attached or can be obtained from the Contracting Officer.

(b) (1) Prior to the award of any sub-contract or grant to a covered organization that might include FY 2000 population funds, the Contractor must request the potential subawardee to complete the FY 2000 Population Assistance Certification Form. Commercial firms that are not engaged in family planning activities (e.g., firms supplying computer equipment, office supplies, maintenance services or printing services) are not considered “covered” organizations. The form provides options for covered organizations either to certify (Option No. 1) or decline to certify (Option No. 2). A copy of the form is attached or can be obtained from the Contracting Officer.

(2) If the subawardee returns the form, the Contractor must forward a copy to the Cognizant Technical Officer. If the subawardee has certified (electing Option No. 1), the Contractor may then make the subaward. If the subawardee has elected Option No. 2, or has not completed the form, the Contractor may not make the subaward until it receives from the Director of USAID’s Office of Population, Global Bureau, or his/her designee, written approval of the organization and the amount to be provided.

(3) The Contractor must keep a copy of the completed FY 2000 Population Assistance Certification Form and any USAID approval in its contract files.

(4) USAID may require a refund of any amounts of FY 2000 population funds that the Contractor awards without following the requirements in paragraph (b)(2).

(c) Remedies for Non-compliance: USAID has approved commitment of FY 2000 population funds under this contract in reliance on certification(s) obtained from covered organizations or USAID's express approval of the maximum amount to be provided in the case of an organization which declines to certify. If a certifying organization materially fails to comply with the terms and conditions of the certification it has provided, USAID or the Contractor

may impose standard remedies available in the event of material non-compliance with a required certification, as well as other remedies which may be applicable under the agreement.

(d) This clause must be included in all subawards that allow for providing FY 2000 population funds to covered organizations. The clause need not be included in subawards that allow funds to be provided only to non-covered organizations, e.g., U.S. entities, or commercial firms not engaged in family planning activities.

Attachment 2

Provision for Grants and Cooperative Agreements to be included in the agreement when FY 2000 population funds may be provided.

POPULATION ASSISTANCE - FY 2000 Certification (JAN 2000)

(a) Requirement for Certain Organizations to Complete Certification Form. Pursuant to Section 599D of the Foreign Operations, Export Financing, and Related Programs Act, 2000 (P.L.106-113), non-U.S., non-governmental organizations, both non-profit and profit-making, and multilateral organizations (“covered” organizations) must complete a FY 2000 Population Assistance Certification Form, prior to receiving any FY 2000 population funds either directly or through subawards. The related Certification Guidance (January 2000), incorporated herein by reference, explains which organizations are covered. A copy of the guidance is attached or can be obtained from the Agreement Officer.

(b) (1) Prior to the award of any sub-contract, grant, or cooperative agreement to a covered organization that might include FY 2000 population funds, the Recipient must request the potential subawardee to complete the FY 2000 Population Assistance Certification Form. Commercial firms that are not engaged in family planning activities (e.g., firms supplying computer equipment, office supplies, maintenance services or printing services) are not considered “covered” organizations. The form provides options for covered organizations either to certify (Option No. 1) or decline to certify (Option No. 2). A copy of the form is attached or can be obtained from the Agreement Officer.

(2) If the subawardee returns the form, the Recipient must forward a copy to the Cognizant Technical Officer. If the subawardee has certified (electing Option No. 1), the Recipient may then make the subaward. If the subawardee has elected Option No. 2, or has not completed the form, the Recipient may not make the subaward until it receives from the Director of USAID’s Office of Population, Global Bureau, or his/her designee, written approval of the organization and the amount to be provided.

(3) The Recipient must keep a copy of the completed FY 2000 Population Assistance Certification Form and any USAID approval in its agreement files.

(4) USAID may require a refund of any amounts of FY 2000 population funds that the Recipient awards without following the requirements in paragraph (b)(2).

(c) Remedies for Non-compliance: USAID has approved commitment of FY 2000 population funds under this Agreement in reliance on certification(s) obtained from covered organizations or USAID's express approval of the maximum amount to be provided in the case of an organization which declines to certify. If a certifying organization materially fails to comply with the terms and conditions of the certification it has provided, USAID or the Recipient may impose standard remedies available in the event of material non-compliance with a required certification, as well as other remedies which may be applicable under the agreement.

(d) This provision must be included in all subawards that allow for providing FY 2000 population funds to covered organizations. The provision need not be included in subawards that allow funds to be provided only to non-covered organizations, e.g., U.S. entities, or commercial firms not engaged in family planning activities.